Volume 6 | Number 17 Article 2

9-8-1995

Cases, Regulations and Statutes

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• The disclaimer of an interest in an item of income in respect of decedent does not constitute a transfer and so gain is not recognized on the exercise of a qualified disclaimer.[24]

• If an installment obligation passes into an estate and in turn is transferred to a beneficiary of the estate, the event is not taxable unless the obligor is a beneficiary.[25] In the event the beneficiary is someone other than the obligor, the income tax basis in the hands of the beneficiary is the decedent's basis adjusted for installments received by the estate prior to the distribution to the beneficiary.[26]

Disposition of an installment obligation to the obligor triggers income in the estate to the extent the obligor acquires the installment obligation .[27]

Keep in mind that disposition of installment obligations entered into by the estate constitutes a taxable disposition.[28] This is a particularly important rule for the sale of land that has been valued under special use valuation.[29] Section 1040 of the Internal Revenue Code operates to shield from recognition the gain on transfer of special use land to a qualified heir.[30] But that section does not appear to shield from recognition the gain on the distribution of an installment obligation from the estate. The statutory exception for installment obligations entered into by the decedent and passed through the estate.[31] does not appear to apply to installment obligations entered into by an estate inasmuch as the distribution from the estate does not involve "transmission of installment obligations at death."[32]

• Transfers occurring by operation of law, such as passage to a surviving joint tenant by right of survivorship do not result in recognition of gain.[33]

Income tax deduction

A taxpayer reporting income in respect of decedent is entitled to an income tax deduction for the federal estate tax on the rights to receive income in respect of decedent that are included in the decedent's gross estate.[34] The deduction is based on the highest federal estate tax rate payable by the estate.[35]

FOOTNOTES

1 See generally 6 Harl, *Agricultural Law* § 47.03 (1995); Harl, *Agricultural Law Manual* § 6.02[1] (1995). See also Harl, "Income in Respect of Decedent," 1 *Agric. L. Dig*. 109 (1990).

2 I.R.C. §§ 691(a), 1014(a).

3 E.g., Rev. Rul. 64-289, 1964-2 C.B. 173 (share rents under nonmaterial participation lease taxable to whomever triggers gain in crops).

4 E.g., Apkin v. Comm'r, 86 T.C. 692 (1986) (Series E bond interest taxed to surviving joint tenant (child) on redemption).

5 Rev. Rul. 64-289, 1964-2 C.B. 173. See Davison v. United States, 292 F.2d 937 (Ct. Cl.), cert. denied, 368 U.S. 939 (1961).

6 Rev. Rul. 64-289, 1964-2 C.B. 173; Rev. Rul. 58-436, 1958-2 C.B. 366.

7 See Rev. Rul. 68-145, 1968-1 C.B. 203.

8 *Id*.

9 Ltr. Rul. 9232006, April 17, 1992.

10 Ltr. Rul. 8407083, Nov. 17, 1983.

11 See Apkin v. Comm'r, 86 T.C. 692 (1986) (all interest, including interest before decedent's death, taxed to co-owner as beneficiary on redemption; no election had been made by decedent to report accrued interest as income). See also Ltr. Rul. 9024016, March 14, 1990 (interest included in income of co-owner in year bonds redeemed, disposed of or reached maturity unless I.R.C. § 454(a) election made; for bonds co-owned by decedent and joint owner, surviving joint owner may elect under I.R.C. § 454(a)).

12 I.R.C. §§ 691(a)(4),453B(c).

13 Treas. Reg. § 1.691(a)-5.

14 See Ltr. Rul. 9023012, March 6, 1990.

15 Estate of Peterson v. Comm'r, 74 T.C. 630 (1980), *aff'd*, 667 F.2d 675 (8th Cir. 1981) (calves sold before death were too light at death to meet contract specifications).

16 See, e.g., Rev. Rul. 92-47, 1992-1 C.B. 198. See also Ballard v. Comm'r, T.C. Memo. 1992-217.

17 See n. 2 *supra.*

18 I.R.C. § 691(a)(2).

19 *Id*.

20 Treas. Reg. § 1.691(a)-4.

21 *Id*.

22 See Sheldon v. Comm'r, 62 T.C. 96 (1974).

23 Rev. Rul. 55-157, 1955-1 C.B. 293.

24 Ltr. Rul. 9319039, Feb. 12, 1993.

25 I.R.C. § 453B(c).

26 *Id*.

27 I.R.C, § 691(a)(4), (5).

28 See Rev. Rul. 55-159, 1955-1 C.B. 391.

29 See I.R.C. § 2032A.

30 I.R.C. § 1040(a).

31 I.R.C. § 453B(c).

32 *Id*.

33 See Treas. Reg. § 1.691(a)-2. See Apkin v. Comm'r, 86 T.C. 692 (1986).

34 I.R.C. §§ 691(c)(2)(A), 691(c)(2)(C).

35 I.R.C. § 691(c)(2)(C).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

POSSESSION. The dispute involved a farm lane which ran between the parties' rural properties. The land was used by a tenant of both parties to farm their lands. The original deed for the plaintiff's portion identified the boundary by two marker stones 72 perches (1188 feet) apart. The first stone was found by surveyors but the second stone was missing. The plaintiffs argued that because the distance came to the lane, the center of the lane was the true boundary. The defendants argued, and the court held, that where a marker is missing, the distance measurement controls and that the lane could not be considered because the lane was not mentioned in the deed. The plaintiffs also argued that they had acquired title to the lane by adverse possession. The court held that the plaintiffs' possession was not sufficiently adverse because it involved only occasional recreational use; in addition, the tenant's use of the lane was permissive since the defendants also gave the tenant permission to use the lane to farm both lands. **Barchowsky v. Silver Farms, 659 A.2d 347 (Md. Ct. App. 1995)**.

ANIMALS

CATTLE. The plaintiff operated a trucking business and was driving a truck on a public highway when the truck struck several cattle on the highway. The plaintiff sued the owner of the cattle in negligence and the trial court submitted the issue on the basis of negligence by *res ipsa loquitur* to the jury. The defendant argued that the doctrine of *res ipsa loquitur* was not available because an owner of cattle in Nebraska owes only a duty of ordinary care not to let the cattle escape onto a highway. The court held that the doctrine of *res ipsa loquitu*r was available in all cases of negligence, independent of the level of the duty of care involved. The court held that the plaintiff had demonstrated the first two elements of *res ipsa loquitu*r in that (1) the cattle escape would not have occurred in the normal course of events, and (2) the fence containing the cattle was in the exclusive control of the defendant. The third element, the absence of an explanation for the escape was a jury question based on whether the jury believed the explanation given by the defendant. The court upheld the jury verdict for the plaintiff. **Roberts v. Weber & Sons, Co., 533 N.W.2d 664 (Neb. 1995)**.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

EXEMPTIONS

ENTIRETIES PROPERTY. The debtors, husband and wife, held various property as tenants by the entirety and claimed this property as exempt. The properties were subject to secured and unsecured debts for which the debtors were jointly liable. The debtors argued that the exemptions were allowed as to the joint unsecured debts. The court held that, under Pennsylvania law, property held as tenants by the entirety was not exempt from all joint debts, secured and unsecured; therefore, the property could not be claimed as exempt in the bankruptcy case. ***In re*** **Houck, 184 B.R. 21 (Bankr. E.D. Pa. 1995)**.

HOMESTEAD. The debtor claimed a homestead exemption for a residence. The debtor used the garage for an electronics repair service which was the debtor's sole source of employment. The trustee objected that under Okla. Stat. tit. 31, § 2, the homestead exemption was limited to $5,000 if the residence was used for both residential and business purposes. The court held that the statute was clear and unambiguous and limited the debtor's exemption to $5,000. ***In re*** **Landry, 183 B.R. 899 (Bankr. W.D. Okla. 1995)**.

The debtors claimed their homestead as exempt and sought to avoid a judicial lien which impaired the exemption. The debtors did not file a homestead declaration with the state. Without the homestead declaration, the debtors' exemption was allowed only against forced sales of the homestead. The debtors claimed that the judicial lien would impair their voluntary sale of the homestead. The court held that the judicial lien could not be avoided since it was not enforceable against the homestead in a voluntary sale of the property. ***In re*** **Amiri, 184 B.R. 60 (Bankr. 9th Cir. 1995)**.

PREFERENTIAL TRANSFERS. The debtor operated a grain storage facility in Ohio. The debtor had entered into delayed pricing contracts with several grain producers who stored grain at the facility. The debtor failed to meet Ohio statutory net worth requirements and its license was suspended. Under Ohio law, grain producers have a statutory lien for grain stored in a licensed facility which continues until the producer receives compensation for the grain. The debtor was allowed to continue in business to liquidate the grain inventory and to disburse payments to the producers. Some of these payments occurred within 90 days before the debtor filed for bankruptcy and the bankruptcy trustee sought to recover the payments as preferential transfers. The trustee argued that the statutory lien was voidable by the trustee under Section 545(1) because it arose only when the facility became insolvent. The court held that the Ohio statutory lien arose when the grain was deposited in the facility. The trustee also argued that the lien was voidable under Section 545(2). The court held that Section 545(2) did not apply because no lien existed at the time of the petition since the producers' liens were extinguished upon payment. Thus, the court held that the producers were secured creditors and that the payments received pre-petition were no more than the producers would have received in the bankruptcy case and the transfers were not avoidable. **Merchants Grain, Inc. v. Adkins, 184 B.R. 52 (S.D. Ind. 1995)**.

CHAPTER 12-*ALM* § 13.03[8].*

MODIFICATION OF PLAN. The debtors' plan had been confirmed and provided that all plan payments were to be made through the trustee. The debtors sought to modify the plan to provide for direct payments to some creditors without payment of the trustee's fee as allowed by *In re Wagner, 36 F.3d 723 (8th Cir. 1994)*, which was decided after the plan was confirmed. The court held that modification of a plan was limited to the three types of modifications allowed by Section 1229(a), none of which involved changing the manner in which plan payments were to be made. The court noted that prior to*Wagner*, debtors could make plan payments directly to creditors but were required to pay the trustee's fees on such payments; therefore, the debtors' plan could have provided for direct payments and *Wagner* then could have been applied to remove the trustee's fees. However, because the debtors' plan provided for payments only through the trustee, the plan could not be modified to allow direct payments. ***In re*** **Wruck, 183 B.R. 862 (Bankr. D. N.D. 1995)**.

CHAPTER 13-*ALM* § 13.03.*

ELIGIBILITY. The debtor was president, director and sole shareholder of a produce marketing corporation which was licensed under PACA. The debtor's schedules listed debts of the corporation, primarily operating expenses and debts for purchased produce, as possible claims against the debtor in case the debtor was held liable for the corporation's debt. The debtor argued that the claims were contingent because the debtor's liability would require a judicial determination of liability. The court held that the debts were not contingent because the debts did not depend on any additional acts or time for the debts to be finally determined as to amount. The court held that the debtor's disputation as to personal liability for the debts did not make the claims contingent. Because the claims exceeded the Chapter 13 eligibility requirement, the case was dismissed. ***In re* Nicholes, 184 B.R. 82 (Bankr. 9th Cir. 1995)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

CLAIMS. The debtor had filed a previous Chapter 13 case which was dismissed. The debtor's current Chapter 13 case was filed more than 3 years after income tax returns were filed and more than 240 days after the taxes were assessed. The Chapter 13 plan provided for 100 percent payment of the tax claims as a priority claim. A creditor objected to treatment of the taxes as a priority claim because the claim did not qualify under Section 507(a)(7)(A). The IRS argued that the previous Chapter 13 case tolled the limitation periods of Section 507(a)(7)(A). The Bankruptcy Court held that 11 U.S.C. § 108(c) did not apply to bankruptcy statutory limitation periods; therefore, the previous Chapter 13 case did not statutorily toll the Section 507(a)(7)(A) limitation periods. However, the court held that it had the equitable power to allow the priority of such claims. The court held that, *as to the creditor*, the equities favored not allowing the claim to have priority and to be treated as a general unsecured claim. The District Court reversed, holding that the previous Chapter 13 case tolled the period for determining priority status of tax claims. ***In re* Eysenbach, 183 B.R. 365 (W.D. N.Y. 1995), *rev'g*, 170 B.R. 57 (Bankr. W.D. N.Y. 1994)**.

PARTNERSHIPS. The taxpayers were partners in a partnership which filed for bankruptcy. The IRS had filed a claim in the partnership case and the claim was included in the plan payments. However, the plan was not completed and the IRS assessed the taxes against the taxpayers as general partners. The assessments were made more than 10 years after the taxes were originally due and the taxpayers argued that the statute of limitations on the assessments had expired. The court held that under I.R.C. § 6503(h), the partnership's bankruptcy filing tolled the statute of limitations on assessments until the automatic stay was lifted in the partnership bankruptcy case. **United States v. Wright, 57 F.3d 561 (7th Cir. 1995), *rev'g*, 868 F. Supp. 1070 (S.D. Ind. 1994)**.

POST-PETITION CLAIMS. The debtors had filed for Chapter 13 and their plan was confirmed. The debtors had completed all payments under the plan when the IRS filed a claim for post-petition taxes. The plan did not provide for payment of post-petition claims but the debtors sought to modify the plan to include the taxes. The court held that the IRS would be granted relief from the automatic stay because the plan did not provide for post-petition claims, the plan could not be modified after all plan payments were made, and the issue was better handled in the Tax Court. ***In re* DeBerry, 183 B.R. 716 (Bankr. M.D. N.C. 1995)**.

FEDERAL AGRICULTURAL PROGRAMS

CROP INSURANCE-*ALM* § 13.04.* The FCIC has adopted as final amendments to the regulations governing the late planted agreement option to remove the wheat, barley, oats, rye and flaxseed endorsements because the endorsements are covered in the small grains crop insurance provisions. **60 Fed. Reg. 40054 (Aug. 7, 1995)**.

HERBICIDES. The plaintiff was a potato farmer who had applied manure and grass clipping on potato fields. The potatoes were damaged by residue from a herbicide in the clippings and manure and the plaintiff sued the herbicide manufacturer for negligence in failing to warn about the residue effects of the herbicide. The court held that the action was pre-empted by FIFRA. The plaintiff argued that the action was not pre-empted insofar as the failure to warn included means other than warnings on labels. The court rejected this argument as also included in the FIFRA pre-emption because other types of warnings were a type of labeling requirement. **Goodwin v. Bacon, 896 P.2d 673 (Wash. 1995)**.

The plaintiffs grew various agricultural products which they alleged were damaged by pesticides drifting from the defendants' wheat farms. The plaintiff also sued the manufacturer of the pesticides for negligent failure to warn about the danger to crops from drifting, negligent testing and negligent marketing. The court held that these causes of action were actually involved with the plaintiffs' claim that the defendant manufacturer was negligent in failing to warn about drift and the actions were pre-empted by FIFRA. **Hue v. Farmboy Spray Co., 896 P.2d 682 (Wash. 1995)**.

The plaintiff was a grain farmer who had applied the herbicide Scepter to the plaintiff's bean fields in one year and planted corn on the same fields in the following year. The corn was alleged to have been damaged by carryover of the herbicide. The plaintiff sued the manufacturer for negligent misrepresentation that corn could be grown one year later on fields treated with Scepter. The focus of this action was on statements made by sales and promotional materials and advertisements, not on label instructions. The defendant argued that the action was a form of failure to warn and was pre-empted by FIFRA. The court held that the action was not pre-empted because it involved non-label communication by the defendant. **Gorton v. American Cyanamid Co., 533 N.W.2d 746 (Wis. 1995)**.

The plaintiff was a city worker whose duties included spraying weeds with a herbicide manufactured by the defendant. The plaintiff sued in negligence, strict liability and breach of implied warranty for personal injuries caused by the herbicide. The defendant argued that the action was pre-empted by FIFRA. The court held that the actions were pre-empted by FIFRA because the plaintiff based the actions on the defendant's failure to provide adequate warnings and instructions with the herbicide. **Quest Chemical Corp. v. Elam, 898 S.W.2d 819 (Tex. 1995), *rev'g*, 884 S.W.2d 907 (Tex. Ct. App. 1994)**..

PAYMENT LIMITATIONS-*ALM* § 10.03[3].* The plaintiffs were a farming corporation and an individual who performed custom farming for the corporation. The plaintiffs were determined by the ASCS (now CFSA) to be one "person" for purposes of the payment limitation provisions. The ASCS ruled that the individual custom farmer had provided financing to the farm clients because the checks for payment for the services were often held for several months before cashing and the individual had agreed in some cases to accept a portion of the crop in payment. The court held that the ASCS determination was supported by the evidence and was not arbitrary or capricious. The plaintiffs also raised the issue of whether the ASCS was estopped from changing the determination of separate person status seven and eight years after the initial determination. The court held that estoppel was not allowed because the delays were caused primarily by the plaintiffs' attempts to hide the true nature of the parties' relationship. The court also held that the ASCS did not make impermissable use of the ASCS Handbook provisions because the determination complied with the published regulations. **Logan Farms, Inc. v. Espy, 886 F. Supp. 781 (D. Kan. 1995)**.

PESTICIDES-*ALM* § 2.04.* The plaintiff was a resident of Los Angeles County who claimed injuries from the spraying of malathion manufactured by the defendants and sprayed on the plaintiff's residential area as part of the California Medfly eradication program. The program provided for written notification of the sprayings but the notifications by the state did not include the exposure warnings on the malathion required by the EPA. The court held that the manufacturers and applicators had no duty to warn the public that the state warnings did not include the label warnings. **Macias v. State, 897 P.2d 530 (Cal. 1995), *rev'g*, 28 Cal. Rptr.2d 796 (Cal. Ct. App. 1994)**.

WEEDS. The APHIS has issued interim regulations redesignating areas of North and South Carolina under quarantine for witchweed control. **60 Fed. Reg. 39835 (Aug. 4, 1995)**.

FEDERAL ESTATE AND GIFT TAX

CHARITABLE DEDUCTION. The taxpayers established an irrevocable charitable lead trust which provided an annuity for a charitable organization and a remainder to the grantor's children or their estates. The grantors could not serve as trustees and were not officers or directors of the charitable organization. The annuity was to be paid first from trust income and then from principal with any excess income added to principal. The IRS ruled that the trust was eligible for a gift tax charitable deduction and was not includible in the grantors' gross estate. The IRS also ruled that the trust property would not be subject to GSTT because the property would not pass to any skip persons. **Ltr. Rul. 9533017, May 16, 1995; Ltr. Rul. 9534004, May 16, 1995**.

DISCLAIMERS-*ALM* § 5.02[6].* The decedent had executed a will in 1965 and became incompetent prior to October 22, 1986 and remained incompetent until the decedent's death. The will provided for estate property to pass to five trusts, one for each of the decedent's children. Two of the children were incompetent and childless and, within nine months after the decedent's death, they disclaimed their interests in the trusts, which passed under the will to the other three trusts. The other three children then disclaimed the property which passed to them under the disclaimers such that the property passed to their children. The IRS ruled that the disclaimers were timely and effective if the disclaimers for the incompetent children were enforceable under state law. The IRS also ruled that the passing of the disclaimed property to the decedent's grandchildren was not subject to GSTT because the property passed under a 1965 will and the decedent was incompetent from before October 22, 1986 until death. **Ltr. Rul. 9534006, May 19, 1995**.

GENERATION SKIPPING TRANSFERS-*ALM* § 5.04[6].* The decedent had established an inter vivos trust which contained all of the decedent's property. The decedent's will provided that the decedent's residuary estate would pass under the terms of the trust. The trust provided for creation of two trusts for each of the decedent's two children, a GSTT nonexempt trust and an exempt trust, with the decedent's GSTT exemption amount split between the trusts. The remainders would pass to the step child of each child. The decedent's grandnephew and grand niece challenged the will and the parties reached a settlement which provided for some of the estate property to pass to the grandnephew and grandniece. The estate tax return included all of the information about the allocation of the GSTT exemption but put the information concerning the two trusts in the direct skip section. The IRS ruled that the return substantially complied with the election requirements to effectively make the GSTT exemption allocation. The IRS also ruled that the property passing to the grandnephew and grandniece was eligible for allocation of a part of the GSTT exemption amount because the settlement was reached in a bona fide dispute involving an enforceable right. **Ltr. Rul. 9534001, May 1, 1995**.

GIFT-*ALM* § 6.01.* The decedent became incompetent prior to death and the decedent's spouse was named conservator. The conservator established an irrevocable trust in the decedent's name and transferred two life insurance policies to a trust, both with approval of a state court. The decedent died within three years of the transfer and the life insurance policies were included in the decedent's gross estate. The IRS ruled that the transfer was subject to gift tax and that the estate was allowed an estate tax credit for gift tax paid. **Ltr. Rul. 9533001, Jan. 23, 1995**.

MARITAL DEDUCTION-*ALM* § 5.04[3].* The decedent's will bequeathed all property to a son. The son and the surviving spouse entered into an agreement to set aside the probate of the will and distribute all of the property to the spouse except for $600,000 which went to the son. The estate claimed a marital deduction for the property which passed to the spouse and stated that no disclaimer was made. The estate argued that the agreement was a disclaimer by the son or that the agreement was a settlement of a bona fide will dispute, both giving rise to a marital deduction for the property passing to the spouse. The court held that the agreement was not a qualified disclaimer because the agreement directed the passing of the property to someone other than the persons, the son's illegitimate children, who would have received the property under the statute. In addition, the agreement was not a settlement of a dispute but a tax avoidance scheme because the spouse had no right under the statute to the decedent's estate. The appellate court reversed, holding that, under the state probate law, the disclaimed property would not have passed to the illegitimate children because the son had not executed a written notice of intent to recognize the children as the son's heirs. **DePaoli v. Comm'r, 95-2 U.S. Tax Cas.**

(CCH) ¶ 60,205 (10th Cir. 1995), ***rev'g*****, T.C. Memo. 1993-577**.

TRANSFERS WITH RETAINED INTERESTS-*ALM* § 5.02[3].* Under Rev. Rul. 79-353, 1979-2 C.B. 325, as modified by Rev. Rul. 81-51, 1981-1 C.B. 458, the IRS position was that where a grantor of a trust retained an unrestricted power to remove a corporate trustee and appoint a new corporate trustee, the grantor was considered to have retained the trustee's discretionary powers over distributions. In light of *Est. of Wall v. Comm'r, 101 T.C. 300 (1993) and Est. of Volk v. Comm'r, 973 F.2d 1409 (8th Cir. 1992), rev'g, T.C. Memo. 1991-503*, the IRS has revoked Rev. Rul. 79-353 and ruled that where a grantor of a trust retained an unrestricted power to remove a corporate trustee and appoint a new unrelated or nonsubordinate corporate trustee, the grantor was not considered to have retained the trustee's discretionary powers over distributions. **Rev. Rul. 95-58, I.R.B. 1995-36**.

The decedent was a beneficiary of a marital trust established by the decedent's predeceased spouse which did not give the decedent any power as trustee to distribute trust corpus except by testamentary power of appointment. As part of estate tax planning, the decedent and trust remainder holders agreed to annual distributions from the trust. Several such distributions were made before the decedent became incompetent. Two annual distributions were made after the decedent became incompetent. Although all the remainder holders signed agreements to the annual distributions, no signature was made for the decedent by a legal representative for the last two distributions. The court held that the pre-incompetency annual agreements were enforceable under state law but that the post-incompetency agreements were revocable; therefore, the trust corpus distributed pre-incompetency were not included in the decedent's gross estate but that the post-incompetency distributions were included in the decedent's gross estate. **Estate of Halpern v. Comm'r, T.C. Memo. 1995-352**.

VALUATION. The taxpayer transferred to a trust a residential property which was used by the taxpayer as a residence. The taxpayer allowed friends and relatives to use the property without charge. The property included a lane, tennis court, swimming pool and a house for which a historic easement had been granted by the taxpayer. The IRS ruled that the trust was a qualified personal residence trust (QPRT) satisfying the requirements of Treas. Reg. § 25.2702-5(c). **Ltr. Rul. 9533025, May 19, 1995**.

FEDERAL INCOME TAXATION

ALCOHOL FUELS CREDIT. The IRS has ruled that where alcohol eligible for the fuels credit under I.R.C. § 40(b)(1)(A) is mixed with alcohol not eligible for the credit, the amount of credit is reduced proportionally by the amount of the ineligible alcohol in the mixture. **Rev. Rul. 95-54, I.R.B. 1995-35**.

HOBBY LOSSES-*ALM* § 4.05[1].* The taxpayers were a doctor and spouse who operated a horse breeding and racing business. The court held that the business was not operated for profit, thus limiting deductions to income, because the taxpayers' recordkeeping was insufficient to evaluate the success of the business, the taxpayers did not seek financial advice to make the business profitable and the taxpayers had a history of losses from other cattle breeding and real estate rental businesses. **Meaney v. Comm'r, 95-2 U.S. Tax Cas. (CCH) ¶ 50,406 (11th Cir. 1995),** ***aff'g*****, T.C. Memo. 1994-94**.

The taxpayer operated a horse breeding venture. The court held that the taxpayer was not entitled to claim deductions relating to the venture because the venture lacked economic substance. The court noted that the taxpayer was not experienced or knowledgeable about the horse breeding business, paid inflated prices for the horses, spent little time on the business and did not consult experts on how to make the venture profitable. **Hartford v. Comm'r, T.C. Memo. 1995-351**.

INSTALLMENT REPORTING-*ALM* § 6.03[1].* The taxpayers had sold some property on installment sale; however, the taxpayers' return preparer erroneously elected not to report the gain on the installment method. The taxpayers used a different return preparer the next year who also prepared the return without using the installment method. The taxpayers' returns were then audited and the new preparer noticed that the installment method was not used on the installment sale of the property and the taxpayers requested an extension of time to revoke the election out of the installment method. The IRS ruled that the revocation would not be allowed because the error was not discovered until after an audit had begun. **Ltr. Rul. 9533012, May 15, 1995**.

INTEREST. The taxpayer purchased a residence and an annuity contract. The residence purchase was financed in part by a mortgage loan which was collateralized in part by the annuity contract. The IRS ruled that the deductible residential mortgage interest is decreased by the amount of the loan collateralized by the annuity contract multiplied by the interest rate on the loan. **Rev. Rul. 95-53, I.R.B. 1995-34**.

INTEREST RATE. The IRS has announced that for the period October 1, 1995 through December 31, 1995, the interest rate paid on tax overpayments is 8 percent and for underpayments is 9 percent. The interest rate for underpayments by large corporations is 11 percent. Note: the GATT legislation reduces the interest rate on overpayments above $10,000 by 1.5 percentage points. **Rev. Rul. 95-59, I.R.B 1995-35**.

PARTNERSHIPS-*ALM* § 7.03.*

LIMITED LIABILITY COMPANIES. A general partnership converted to a registered limited liability company under New York law. The IRS ruled that the RLLP would be taxed as a partnership because (1) the RLLP lack continuity of life since a partner could dissolve the partnership in certain circumstances without the consent of the other partners; (2) the RLLP lacked centralized management since under the RLLP law, all partners can act as agents of the partnership in carrying out the normal business of the RLLP; and (3) the RLLP lacked the characteristic of free transferability of interests since no interest in the partnership could be transferred with consent of all of the other partners. **Rev. Rul. 95-55, I.R.B. 1995-35**.

PAYMENT OF WAGES IN COMMODITIES. The Social Security Administration has issued a ruling as to when noncash transfers for agricultural labor are considered

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wages for under the Social Security Act so that the treatment of such transfers is consistent with IRS treatment of the transfers. The ruling generally adopts the IRS position stated in Rev. Rul. 79-207, 1979-2 C.B. 351. Note: the IRS has issued additional guidelines. See Harl, "Guidelines On Payment Of Wages In Kind," 6 Agric. Dig. 26 (1995). **Social Security Ruling 95-3p, 60 Fed. Reg. 40221 (Aug. 7, 1995)**.

RETURNS. The IRS has issued temporary regulations providing that the IRS may require a return preparer to use a method of signing returns other than pen-to-paper or a facsimile signature stamp. **60 Fed. Reg. 37585 (July 21, 1995)**.

S CORPORATIONS-*ALM* § 7.02[3][c].*

INADVERTENT TERMINATIONS. An S corporation shareholder transferred stock to a grantor trust which was an eligible S corporation shareholder. When the shareholder died, the trust passed to a remainder holder who failed to make the QSST election. When the second trust beneficiary died, the stock passed in trust to several children who also failed to make the QSST election. When the omissions were discovered the beneficiaries made the election. The corporation and shareholders had made returns consistent with S corporation status. The IRS ruled that the termination of S corporation status was inadvertent and allowed the corporation to retain its S corporation status through the period involved. **Ltr. Rul. 9533006, May 3, 1995**.

TRUSTS. The taxpayers transferred appreciated rental property to a foreign corporation in exchange for annuities. The court held that the taxpayers remained liable for the tax on the rental income because no title was transferred to the corporation, the taxpayers retained the benefits and burdens of the property ownership, and the taxpayers retained the rental income. **Spearbeck v. Comm'r, T.C. Memo. 1995-357**.

SECURED TRANSACTIONS

FEDERAL FARM PRODUCTS RULE-*ALM* § 13.01[4][a].* The debtors were farmers who had granted security interests in their farm products to the plaintiff bank. Because Kansas did not have a certified central filing system for purposes of the federal farm products statute, 7 U.S.C. 1631, the bank had sent several annual written notices of its security interest to the defendant agricultural cooperative. The cooperative had also extended credit to the debtors and had purchased farm products from the debtors, either by crediting the purchases against the debtors' account or by issuing checks. After the debtors filed for bankruptcy, the bank sued the cooperative for conversion in failing to make payments for the farm products by checks made out jointly to the bank and the debtors. The cooperative argued that the written notices of the security interest were ineffective because they did not strictly comply with the requirements of the statute. The notices identified the debtors, their address, the existence of the security interest in farm products and a listing of the farm products as grain or beans. The statute also required identification of the land on which the crop was grown, identification of the county in which the crops were grown and the specific type of grain. The cooperative argued that the statute did not provide for any substantial compliance standard; therefore, the omission of any item made the notices ineffective. The court noted that the statute did not provide any provision for failure to comply completely with the notice requirements and compared the written notice requirements to the requirements under a certified central filing system which do not require strict compliance with the filing requirements. The court held that the bank had substantially complied with the notice requirements sufficient to put the cooperative on notice of the security interest for purposes of the federal farm products rule. **First Nat'l Bank v. Miami County Co-op., 897 P.2d 144 (Kan. 1995)**.

WAIVER. The plaintiff was a bank which loaned operating funds to a cattle farmer who fed cattle for the defendant under "buy-back" agreements. Under the agreements, the defendant sold cattle to the farmer who fed the cattle and then resold the cattle back to the defendant for a set price less the original price of the cattle. The farmer had granted the bank a security interest in all farm property, including after-acquired property. The bank brought an action for conversion against the defendant for issuing a check to the farmer alone for some cattle and the farmer failed to pay the proceeds on the loan secured by the cattle. The defendant argued that the bank had waived its security interest by not requiring written consent for the sale of cattle by the farmer over several years. The court held that the defendant could not claim waiver of the security interest by the bank because the security agreement required written consent for any waiver and the defendant had constructive notice of the recorded security interest and did not check the public records. The courts holding also appears to be based on the defendant's failure to rebut the bank's evidence that it never allowed the farmer to sell collateral for checks issued in the farmer's name alone. **First Bank v. Eastern Livestock Co., 886 F. Supp. 1328 (S.D. Miss. 1995)**.

STATE TAXATION

AGRICULTURAL USE. The plaintiff owned 72 acres of undeveloped land as trustee of a land trust. The trust originally intended to develop residential condominiums on the property and obtained a zoning change to allow the development. The project became infeasible and the plaintiff planted ornamental trees on the property for free use by a landscaping business also owned by the plaintiff. The plaintiff appealed the denial of an agricultural use classification. The defendant county appraiser argued that the initial price of the land, the rezoning request and lack of profitability of the trees were sufficient to deny agricultural use classification. The court held that the initial price as development land and the rezoning were no longer relevant to the current use of the land for an agricultural purpose. The court also held that a profit is not required if the land is used for a bona fide agricultural purpose. Although the trust did not realize any profit from the growing of the trees, the other business owned by the trustee used the trees to their profit, creating a bona fide agricultural use of the trust land. **Wilkinson v. Kirby, 654 S.2d 194 (Fla. Ct. App. 1995)**.

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